



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/153377

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 07, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 10, 2013, at Milwaukee, Wisconsin. The record was held open to give Petitioner an opportunity to review the agency's exhibits and write the Division of Hearings and Appeals with any comments. She did so.

The issue for determination is whether Petitioner was overissued FoodShare benefits and, if so, whether the amount of the overissuance has been correctly calculated.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated October 4, 2013. It informed Petitioner that her FoodShare household had been overissued FoodShare benefits for the period from

January 15, 2013 through July 31, 2013 in the amount of \$3,114.00. This is claim number [REDACTED]

3. The basis for this FoodShare overissuance claim was agency error. Petitioner correctly reported household composition and income but it was not correctly budgeted, specifically, the income for Petitioner's boyfriend, the father of her child and who lives in Petitioner's household, was not included as household income.
4. Petitioner's household size is 3. Her shelter expense was, at all times relevant here, \$730.00 though the overpayment and allotment calculations only included her half, i.e., \$365.00.

### DISCUSSION

The Federal Regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook, Appendix §7.3.2*. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, *7 CFR § 273.18(b)*; see also *FoodShare Wisconsin Handbook, App. 7.3.1.9*. Overpayments due to "client error" may be recovered for up to six years after discovery. *FoodShare Wisconsin Handbook, §7.3.2.1*.

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .
- 7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.*

Also relevant here is the following as to who must be included in a FoodShare household:

#### **3.3.1.3 Relationship Rules**

*7 CFR 273.1(b)(1)*

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...

*FSH, §3.3.1.3.*

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The facts and income here are not in dispute. Petitioner and her co-parent do not, however, think it fair that there is not some agency liability for the overpayment given that it was agency error. Nonetheless, the law requires that all overissuances be recovered, regardless of whose error, unless the overpayment is an agency error and discovered more than 12 months after the overpayment. This overpayment time period is less than 12 months from the date of discovery. Further, the Division of Hearings and Appeals

does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform “equity” in the manner sought.

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. 7 *CFR* §273.10(c)(2).

The gross income limit applicable during the period of this overissuance was \$3182 for a group of three. *FSH*, §8.1.1, release 12-02. Petitioner’s household income was under that figure for all months except July 2013 when income was noted by the agency to be \$3974.67.

Thus there was no FoodShare eligibility for July 2013 for Petitioner as household income was over the gross income limit.

For January through June, however, Petitioner’s household was under the gross income limit but the net income still had to be determined. Once a household passes the gross income test the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, 7 *CFR* § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility allowance is a standard and is \$446.00 per month and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5). There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.1 and 8.1.3.

In reviewing these months it appears that the agency erred by using only half of Petitioner’s shelter costs. Those should have been \$730 plus the standard utility allowance of \$446. This totals \$1176 which is more than half of Petitioner’s adjusted income in at least two of the months involved here – January and March 2013. Nonetheless, even with that deduction Petitioner’s net income would still have been in excess of \$2000 per month and with that amount of income Petitioner’s household would not have been eligible for FoodShare in the months from January through June 2013. *See FSH*, §8.1.2.

### **CONCLUSIONS OF LAW**

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

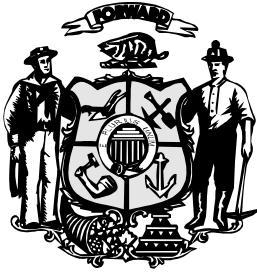
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of January, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 16, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability